

**AGENDA — October 24, 2001 Business Taxes Committee Meeting**  
***Proposed New Diesel Fuel Regulation***  
***Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities***

<b>Action 1 — Consent Item(s)</b> Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities	Adopt proposed regulation as agreed upon by industry and staff.
<b>Action 2 — Authorization to Publish</b>	Direct the publication of the proposed regulation as adopted in the above action.  Operative Date:   None Implementation:   Upon OAL approval

Issue Paper Number 01 - 035



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

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## **Proposed New Diesel Fuel Regulation Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities**

### **I. Issue**

Should the Board adopt Regulation 1434 to explain and clarify who may file a claim for refund for tax paid on diesel fuel sold to the United States and how a claim for refund is filed?

### **II. Staff Recommendation**

Staff recommends that proposed Regulation 1434, *Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities*, (Exhibit 2) be adopted to explain and clarify who may file a claim for refund of tax paid on diesel fuel sold to the United States and how to file the claim for refund.

### **III. Other Alternative(s) Considered**

Do not adopt the proposed regulation.

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## **IV. Background**

The diesel fuel tax does not apply to the sale of diesel fuel to the United States and its agencies and instrumentalities (the “United States”). Section 60100 of the Revenue and Taxation Code provides for an exemption from the diesel fuel tax when a supplier sells diesel fuel to the United States. Section 60501 of the Revenue and Taxation Code allows for a refund of the diesel fuel tax to a person who has purchased tax-paid diesel fuel and resells the diesel fuel to the United States.

There has been some misunderstanding as to who should file a claim for refund for the tax on tax-paid diesel fuel sold to the United States and how the claim should be filed. Also, there has been some uncertainty as to who should file a claim for refund when the United States uses an access card to purchase diesel fuel.

### Discussion of Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities.

The excise tax is imposed on diesel fuel at the time the fuel is removed from the refinery or terminal rack. Generally, a supplier is liable for payment of the tax on diesel fuel when the supplier removes the fuel from the rack. However, fuel that the supplier sells to the United States is exempt from diesel fuel tax. The supplier can sell either ex-tax fuel or tax-paid fuel. The proposed regulation clarifies that if a supplier sells ex-tax fuel to the United States, it can claim an exemption on its tax return and if the supplier sells tax-paid fuel to the United States, it can claim a credit on its tax return for the tax paid on the fuel.

A person licensed as an ultimate vendor may file a claim for refund when it sells tax-paid diesel fuel to the United States. The proposed regulation clarifies that an ultimate vendor may claim such refund on its Diesel Fuel Ultimate Vendor Report/Claim for Refund form.

The United States may purchase diesel fuel ex-tax from a wholesaler who has already paid tax on the fuel it delivers into a storage tank of the United States. The proposed regulation clarifies that the wholesaler may file a claim for refund.

The United States may also purchase diesel fuel at retail service stations. The retailer that owned the tax-paid diesel fuel and directly sold the tax-paid diesel fuel ex-tax to the United States may file a claim for refund.

The United States sometimes enters into arrangements with fuel retailers so that its employees may obtain diesel fuel by using an access card. The access card issuer either owns the tax-paid diesel fuel at the dispensing site or purchases the tax-paid diesel fuel as it leaves the pump and is dispensed into the fuel tank of the United States government vehicle. The card issuer pays the service station the full amount of the cost of the diesel fuel, including tax, and collects from the United States the cost of the diesel fuel, minus the tax. The proposed regulation clarifies that the access card issuer may claim a refund of the tax it paid on fuel that it sold ex-tax to the United States.

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## **V. Staff Recommendation**

### **A. Description of the Staff Recommendation**

Staff recommends that proposed Regulation 1434, *Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities*, be adopted to explain and clarify who may file a claim for refund of tax paid on diesel fuel sold to the United States and how to file the claim for refund. Interested parties, including industry, are in agreement with the proposed regulation.

### **B. Pros of the Staff Recommendation**

- Provides clear guidance to staff and industry on who may file a claim for refund on sales of diesel fuel to the United States.
- Provides clarification of how the various sellers of diesel fuel to the United States may file a claim for refund.
- Provides guidance to industry as to what documentation is required to support a claim for refund for ex-tax sales of tax-paid diesel fuel to the United States.

### **C. Cons of the Staff Recommendation**

None.

### **D. Statutory or Regulatory Change**

No statutory change required. The recommendation is to authorize publication of a new regulation.

### **E. Administrative Impact**

None.

### **F. Fiscal Impact**

#### **1. Cost Impact**

No additional cost. The workload associated with publishing the new regulation is considered routine and any corresponding cost would be within the existing budgeted base.

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**2. Revenue Impact**

See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact**

The proposed regulation is anticipated to have a positive impact on sellers of tax-paid diesel fuel to the United States by providing, in a regulation, clarification of who may file a claim for refund and the documentation needed to support the claim.

**H. Critical Time Frames**

None.

**VI. Alternative 1**

**A. Description of the Alternative**

Do not adopt the proposed regulation.

**B. Pros of the Alternative**

None.

**C. Cons of the Alternative**

Fails to clarify and explain who may file a claim for refund of tax paid on diesel fuel sold to the United States and how the claim for refund is filed.

**D. Statutory or Regulatory Change**

None.

**E. Administrative Impact**

None.

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**F. Fiscal Impact**

**1. Cost Impact**

None.

**2. Revenue Impact**

See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact**

Some sellers of tax-paid diesel fuel to the United States may not know they are able to file a claim for refund of the tax or may not retain documentation necessary to support their claims for refund if no clarifying regulation is adopted.

**H. Critical Time Frames**

None.

Prepared by: Fuel Taxes Division, Special Taxes Department

Current as of: October 2, 2001



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## PROPOSED NEW DIESEL FUEL REGULATION REGULATION 1434, SALES OF DIESEL FUEL TO THE UNITED STATES AND ITS AGENCIES AND INSTRUMENTALITIES

### **Staff Recommendation**

Staff recommends that proposed Regulation 1434, *Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities*, (Exhibit 2) be adopted to explain and clarify who may file a claim for refund of tax paid on diesel fuel sold to the United States and how to file the claim for refund.

### **Alternative 1**

Do not adopt the proposed regulation.

### **Background, Methodology, and Assumptions**

#### **Staff Recommendation:**

There is nothing in the proposed Regulation 1434 that would impact revenues.

#### **Alternative 1:**

Alternative 1 has no revenue effect.

### **Revenue Summary**

The staff recommendation has no revenue effect.

The alternative proposal has no revenue effect.

## **Preparation**

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Mr. Edward King, Chief, Fuels Tax Division. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of September 21, 2001



**Regulation 1434. Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities.**

**(a) IN GENERAL.** The diesel fuel tax does not apply to the sale of diesel fuel to the United States and its agencies and instrumentalities. Examples of the United States and its agencies or instrumentalities include, but are not limited to, the American Red Cross, U.S. Postal Service, branches of the armed services, military exchanges, and agencies such as the USDA Forest Service and the Department of Housing and Urban Development.

**(b) SALES OF EX-TAX DIESEL FUEL.** A supplier licensed under the Diesel Fuel Tax Law that makes sales of ex-tax diesel fuel to the United States and its agencies and instrumentalities, may claim an exemption on its diesel fuel tax return.

**(c) SALES OF TAX-PAID DIESEL FUEL.**

(1) A supplier licensed under the Diesel Fuel Tax Law that makes sales of tax-paid diesel fuel to the United States and its agencies and instrumentalities may claim a credit on its diesel fuel tax return. The tax-paid fuel may be sold in bulk or through any company-owned retail service station.

(2) A person licensed as an ultimate vendor under the Diesel Fuel Tax Law who makes a sale of tax-paid fuel to the United States and its agencies and instrumentalities may claim a refund on its Diesel Fuel Ultimate Vendor Report/Claim for Refund form.

(3) (A) A diesel fuel seller not required to be licensed under the Diesel Fuel Tax Law, including, but not limited to, a wholesaler, access card issuer or service station operator may file on forms prescribed by the Board, a claim for refund of tax on its sales of tax-paid diesel fuel to the United States and its agencies and instrumentalities as to those gallons of diesel fuel it sells ex-tax to the United States and its agencies and instrumentalities. The claim for refund may only be filed by the person that owned the tax-paid diesel fuel and directly sold the tax-paid diesel fuel to the United States and its agencies and instrumentalities.

(B) "Access card issuer" means a person that issues to a customer an access card or code or similar access device which entitles the customer to obtain fuel owned by the access card issuer at participating fuel dispensing sites. As used in this regulation "fuel owned by the access card issuer" means fuel owned by the access card issuer at its own fuel dispensing site or fuel purchased by the access card issuer from an operator of a fuel dispensing site at the time that the fuel is dispensed to the United States and its agencies and instrumentalities.

**(d) DOCUMENTATION FOR BULK TRANSACTIONS.** Any person claiming an exemption, credit, or refund for bulk sales of diesel fuel to the United States and its

agencies and instrumentalities, must retain supporting documentation. Documentation may include, but is not limited to:

(1) A copy of the United States government purchase order or other documentation authorizing the purchase of the diesel fuel.

(2) A copy of the billing invoice or other documents identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the invoice billing date, the invoice billing number, the number of diesel fuel gallons sold to the United States and its agencies and instrumentalities and a clear indication that no diesel fuel tax reimbursement was collected from the United States and its agencies and instrumentalities.

(3) Documentation showing that the diesel fuel in question was acquired ex-tax by a licensed supplier claiming the exemption.

(4) Documentation showing that the diesel fuel in question was acquired tax-paid by a person claiming the credit or refund.

**(e) DOCUMENTATION FOR NON-BULK TRANSACTIONS.** Any person claiming a credit or filing a claim for refund on retail sales of tax-paid fuel sold in non-bulk quantities, including credit card sales to the United States and its agencies and instrumentalities, must retain supporting documentation. Documentation may include, but is not limited to:

(1) A copy of the billing invoice or other documentation identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the invoice billing date, the invoice billing number, the number of diesel fuel gallons sold to the United States and its agencies and instrumentalities and a clear indication that no diesel fuel tax reimbursement was collected from the United States and its agencies and instrumentalities.

(2) Documentation showing that the diesel fuel in question was acquired tax-paid by a person claiming the credit or refund.

(3) A copy of the credit card receipt or listing of credit card transactions provided by the card processor, identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the date of the transaction, the record number of the receipt, and the number of diesel fuel gallons sold to the purchaser.

(4) A copy of the charge back of the tax to the retailer by the credit card processor.

Authority: Section 60601 of the Revenue and Taxation Code.

Reference: Sections 60100, 60501, and 60508 of the Revenue and Taxation Code.